

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ROBERT J. ADDINGTON, JR.)

For Appellant: Robert J. Addington, Jr.
 in pro. per.

For Respondent: John A. Stilwell, Jr.
 Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Robert J. Addington, Jr., against a proposed assessment of additional personal income tax and a penalty in the total amount of \$2,683.12 for the year 1974, and on his protest against a proposed assessment of additional personal income tax in the amount of \$1,255.44 for the year 1975.

Appeal of Robert J. Addington, Jr.

The sole issue for determination is whether appellant Robert J. Addington, Jr., was a California resident for income tax purposes between May 1, 1974, and May 1, 1975,

For the past eleven years or more--with the exception of the twelve months at issue in this case--appellant Robert J. Addington, Jr., has resided in southern California. Until 1970, appellant was a sales manager for Willis Oil Tool Company (Willis) in Long Beach. In 1970, he left Willis and began his own company, R. J. Addington & Associates, in Bakersfield.

In 1974, Willis asked appellant to replace the sales manager in Willis's London office. Appellant accepted the position and moved to England on or about May 1, 1974. No written agreement between Willis and appellant dictated the length of his London employment. In a letter to appellant dated September 1, 1978, Willis's executive vice president stated, "We do not have written contracts with any of our people in foreign offices, but it is mutually understood that [your] period of foreign employment would be for a three year period." In his protest to the Franchise Tax Board, appellant asserted that he expected his stay in England "to be for at least two years." Notwithstanding the discrepancy in the above two statements, it is clear that appellant intended to work for Willis in London for a finite period of time, not to exceed three years.

By pre-arrangement, while appellant was in England, an acquaintance occupied his home in Bakersfield, California, rent-free as a resident caretaker, and appellant's father managed R. J. Addington & Associates.

In May 1975, Willis unexpectedly called appellant back to Long Beach so **that he could take over the** position of International Sales Manager there. Appellant returned in May to southern California, apparently let the resident caretaker live in his Bakersfield home until December, and continued to work for Willis for five more months.

Appellant filed part-year resident California income tax returns for 1974 and 1975, and excluded from gross income all the income he earned in England. Respondent determined that appellant remained a California resident for income tax purposes throughout the years in question, and that he therefore was taxable on his

Appeal of Robert J. Addington, Jr.

entire taxable income from all sources. Accordingly, respondent issued proposed assessments which added the sums earned in England to his previously reported California income. The assessment for 1974 included a ten percent penalty because appellant's 1974 return was filed two months late. Appellant protested the assessments on the ground that he was not a California resident during his stay in England, and has appealed from respondent's denial of his protest.

Revenue and Taxation Code section 17041 requires a tax to be paid upon all the taxable income of each California resident. (Appeal of William Harold Shope, Cal. St. Bd. of Equal., May 21, 1980.) Section 17014, subdivision (a)(2) defines "resident" to include "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose."

Respondent argues that appellant was a California resident during his twelve months abroad because he was domiciled in this state and because his absence was for a temporary or transitory purpose. For the reasons expressed below, we agree with respondent,

The first question is whether appellant was domiciled in California within the meaning of section 17014, subdivision (a)(2), throughout the years at issue. "Domicile" has been defined as:

[t]he one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning (Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 [41 Cal.Rptr. 673] (1964).)

An individual may claim only one domicile at a time (Cal. Admin. Code, tit. 18, **reg. 17014-17016(c)**); in order to change one's domicile, one must actually move to a new residence and intend to remain there permanently or indefinitely. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 [102 Cal.Rptr. 195] (1972); Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969).) An expectation of returning to one's former place of abode defeats the acquisition of a new domicile. (Cal. Admin. Code, tit. 18, **reg. 17014-17016(c)**; Appeal of Richard and Carolyn Selma, Cal. St. Bd. of Equal., Sept. 28, 1977.)

Appeal of Robert J. Addington, Jr.

The record shows that appellant was domiciled in California for several years prior to traveling abroad in 1974. He kept his Bakersfield home while away, and he has lived in this state continuously since leaving England in 1975. He went to England with the understanding that his stay there would be neither indefinite nor permanent, and with the intention of returning to California within two or three years. Appellant contests none of this. These circumstances convince us that appellant did not establish a new domicile in England, but remained domiciled in California throughout his absence,

Since appellant was domiciled here, he will be considered a California resident if his absence was for a temporary or transitory purpose. In the Appeal of David J. and Amanda Broadhurst, decided by this board on April 5, 1976, we summarized as follows the regulations and case law interpreting the phrase "temporary or transitory purpose:"

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of fact, to be determined by examining all the circumstances of each particular case. [Citations.] The regulations also provide that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. [Citations,] The purpose of this definition is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government. [Citation.] Consistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. [Citation.] Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests; voting registration and the possession of a local driver's license; and ownership of real property. [Citations.] Such connections are important both as a measure of the benefits and protection which the taxpayer

Appeal of Robert J. Addington, Jr.,

has received from the laws and government of California, and also as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes, [Citation.]

We also note that respondent's determination of residency status, and proposed assessments based **thereon**, are presumed to be correct; the taxpayer bears the burden of proving respondent's actions erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.)

In the instant case, appellant claims that he left California with the expectation of staying away "for at least two years." Notwithstanding this contention, the few facts before us demonstrate that the majority of his ties remained with California during the appeal years. Appellant does not dispute the fact that, while in England, he retained ownership of his home in Bakersfield and of R. J. Addington & Associates. Moreover, he has not presented a shred of evidence to indicate that he either severed any connections with California or established any significant new bonds with England.

Given these circumstances, we must conclude that **appellant's** closest connections were with California, and that his visit to England was for a temporary or transitory purpose. Appellant has not sustained his burden of proving otherwise. We therefore hold that appellant **was** a California resident during his absence in **1974** and **1975**.

We will sustain respondent's actions for the reasons stated above.

Appeal of Robert J. Addington, Jr.

O R D E R

Pursuant to the views' expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Robert J. Addington, Jr., against a proposed assessment of additional personal income tax and a penalty in the total amount of \$2,683.12 for the year 1974, and on his protest against a proposed assessment of additional personal income tax in the amount of \$1,255.44 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day Of January , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

_____	, Chairman
George R. Reilly	, Member
Ernest J. Dronenburg, Jr.	, Member
Richard Nevins	, Member
_____	, Member